

APR 7 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE GUADALUPE
PEREZ-HERNANDEZ,

Defendant - Appellant.

No. 01-10307

D.C. No. CR-00-00197-PMP
District of Nevada, Las Vegas

ORDER

Before: D.W. NELSON, BEEZER and WARDLAW, Circuit Judges.

The Government's Ex Parte Motion for Extension of Time to File Response to Petition for Rehearing and Motion to Seal are GRANTED.

The Appellant's petition for rehearing is DENIED. We amend the memorandum disposition, filed October 24, 2002, as follows:

The second paragraph is deleted and replaced with:

First, Perez argues that the five-year suspended sentence imposed for his prior Nevada robbery conviction does not meet 8 U.S.C. § 1101(a)(43)(F)'s "one-year term of imprisonment" requirement and thus that the district court erred in enhancing his offense level by sixteen for a prior aggravated felony. While Perez acknowledges that the "one-year term of imprisonment" requirement

encompasses suspended sentences, *see United States v. Echavarria-Escobar*, 270 F.3d 1265, 1266 (9th Cir. 2001), he contends that his sentence was not truly a suspended sentence because the Nevada state court did not enforce it after revoking his probation. However, because the court imposed a five-year sentence for the robbery conviction and then suspended that sentence, we reject Perez’s definitional argument. *See United States v. Kipp*, 10 F.3d 1463, 1467 (9th Cir. 1993) (acknowledging that, by definition, a “suspended sentence” need not include a custodial or supervisory component).